

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY FORTH, DONNA BAILEY,)
LISA BULLARD, RICARDO GONZALES,)
CYNTHIA RUSSO, TROY TERMINE,)
INTERNATIONAL BROTHERHOOD OF)
ELECTRICAL WORKERS LOCAL 38)
HEALTH AND WELFARE FUND,)
INTERNATIONAL UNION OF OPERATING)
ENGINEERS LOCAL 295-295C WELFARE)
FUND, AND STEAMFITTERS FUND)
LOCAL 439, on Behalf of)
Themselves and All Others)
similarly Situated,)

Plaintiffs,)

vs.)

WALGREEN CO.,)

Defendant.)

Case No.

1:17-cv-02246

The videotaped deposition of EDWARD FOX,
taken before Maria S. Winn, CSR, RPR and CRR,
pursuant to the Federal Rules of Civil Procedure
for the United States District Courts pertaining
to the taking of depositions, at Reed Smith,
10 South Wacker Drive, Suite 4000, Chicago,
Illinois, commencing at 9:22 a.m. on May 7, 2019.

1 Q Is it R-a-s-m-u-s-s-e-n?

2 A R-a-s-m-u double s-e-n.

3 Q Has anyone at the Fund discussed the
4 allegations of this case with anyone at United
5 Actuarial?

6 A No.

7 MR. LEIB: Why don't we take a break.

8 THE VIDEOGRAPHER: We are going off the
9 record at 10:59 a.m.

10 (WHEREUPON, a recess was taken,
11 after which the following
12 proceedings were held:)

13 THE VIDEOGRAPHER: We are back on the
14 record at 11:22 a.m.

15 This is Media Set 3.

16 BY MR. LEIB:

17 Q Mr. Fox, earlier you talked about the
18 Medicare participants being on an advantage plan,
19 correct?

20 A (No verbal response.)

21 Q And that's -- you have to say yes --

22 A Yes.

23 Q -- instead of just nodding your head.

24 And that is -- I mean, you don't have to

1 say yes. I don't want to put words in your mouth,
2 but nodding yes won't do it for the record.

3 The Humana plan is separate from your
4 Caremark plan, correct?

5 A Correct.

6 Q And for the Humana plan, am I correct
7 that the Fund pays Humana a set fee per
8 participant; is that correct?

9 A Correct.

10 Q And that fee then covers all of the
11 medical expenses of the participant. Correct?

12 A Medical and drug.

13 Q And so once you pay -- "you" being the
14 Fund -- once the Fund pays Humana whatever it
15 pays, \$100 a month, \$200 a month, whatever it is,
16 the Fund at that point can have no further
17 exposure in relation to any medical or
18 prescription drug expenses; is that correct?

19 A That is correct. It's a fully-insured
20 policy.

21 Q So would I be correct in saying that your
22 Medicare participants, including their dependents,
23 get a Humana prescription drug card rather than a
24 Caremark prescription drug card?

1 A Correct.

2 Q And if a Medicare participant gets
3 unfortunate, you know, illness such as cancer or
4 something, and there's a drug that costs 200,000 a
5 year, let's say, Humana would be fully responsible
6 for that, correct?

7 A Correct.

8 Q The Fund would pay zero for that,
9 correct?

10 A Correct.

11 Q Because the Fund pays zero, other --
12 because other than paying its premium to Humana,
13 the Fund pays zero dollars for all prescription
14 fills for its Medicare beneficiaries, correct?

15 A That is correct. But that plan was
16 effective 1/1 of '17.

17 Q Prior to 1/1 of '17, how did the Fund
18 cover Medicare participants for prescription drug
19 benefits?

20 A It was done through the prescription --
21 through the PBM, the CVS Caremark, or Sav-Rx.

22 Q Would you agree that since January 1st
23 of 2017 if, in fact, Walgreens overcharged one of
24 your Medicare participants for a drug, that would

1 have zero effect on the bottom line of the Fund?

2 A I would have no information to say that.

3 Q Well, let's say Walgreens -- and we're
4 only talking for the time frame since
5 January 1st, 2017.

6 Let's say Walgreens charged one of your
7 Medicare participants \$10 for a drug.

8 How much would the Fund pay?

9 A The Fund would pay nothing.

10 Q And let's say for that same drug, instead
11 of charging \$10, which Walgreens should have
12 charged, Walgreens charges \$50 for that drug.

13 How much would the Fund pay?

14 A Nothing. That would be between Humana
15 and Walgreens.

16 Q So the price that Walgreens charges for a
17 particular medication to a Medicare participant is
18 irrelevant to the Fund, correct?

19 MR. GUGLIELMO: Objection, form.

20 MR. LEIB: Strike that. I'll ask it in a
21 different way.

22 BY MR. LEIB:

23 Q So the price that Walgreens charges for a
24 particular medication to one of the Fund's

1 Medicare participants does not affect how much
2 money is in the Fund's coffers, correct?

3 A It is correct, because it's a
4 fully-insured contract.

5 I mean -- but it's different, because
6 previously we were self-insured. So that would
7 impact what was in the Plan assets.

8 Q But I'm only talking for the
9 January 1st, 2017 period onward.

10 For that period, the price that Walgreens
11 charges for a particular medication to one of the
12 Fund's Medicare participants does not affect how
13 much money is in the Fund's coffers, correct?

14 A Correct.

15 Q In this case, is the Fund trying to
16 recover any money for prescriptions filled by its
17 Medicare participants on or after January 1st,
18 2017?

19 A No.

20 Q Do you know why the Fund filed this
21 lawsuit?

22 A Because the Fund spent dollars that -- on
23 prescription drugs that the participants should
24 have received a lower price on.

1 that over the course of the plan year, being
2 October 1st, 2014, to September 30th, 2015,
3 that in the aggregate for all the purchases of
4 generic drugs that your participants make, that
5 the generic -- I'm sorry -- the minimum discount
6 will be AWP minus 81 percent?

7 A Yes.

8 Q It could be 81 -- it could be AWP minus
9 85 percent, and that would be okay, right?

10 A Yes.

11 Q Because it's just a minimum discount
12 guarantee, right?

13 A Correct.

14 Q But if the -- at the end of the year, the
15 discount ended up being AWP minus 75 percent, and
16 Caremark would not have hit the minimum discount
17 guarantee, correct?

18 A Correct.

19 Q And then in that circumstance, Caremark
20 would send the Fund a check to ensure that the
21 minimum discount guarantee was met, correct?

22 A Correct.

23 Q Let's turn back to the complaint for a
24 second, the second amended complaint.

1 At the bottom of page 13, the second line
2 from the bottom, there's a sentence that starts:

3 "Plaintiff IBEW Local 38 is ultimately at
4 risk and responsible for reimbursing or paying for
5 beneficiaries' purchases of prescription drugs."

6 Is that a true statement?

7 A Yes, we are, less the applicable co-pays.

8 Q So this doesn't refer to co-pays, this
9 sentence, correct?

10 A It doesn't.

11 Q So would it have been more accurate to
12 say that Plaintiff IBEW is ultimately at risk and
13 responsible for reimbursing or paying for a
14 portion of beneficiaries' purchases of
15 prescription drugs?

16 MR. GUGLIELMO: Objection, form.

17 A It would just make more sense to include
18 less the co-pay.

19 BY MR. LEIB:

20 Q And that would have been more accurate,
21 if it had included less the co-pay, correct?

22 MR. GUGLIELMO: Objection, form.

23 A Yes.

24

1 BY MR. LEIB:

2 Q And in fact, IBEW Local 38 is not
3 ultimately at risk and responsible for reimbursing
4 or paying for the Medicare beneficiaries, at least
5 since January 1, 2017, correct?

6 A Correct.

7 Q So it would have been accurate had this
8 sentence excluded Medicare beneficiaries since
9 January 1, 2017, correct?

10 MR. GUGLIELMO: Objection, form.

11 A Correct.

12 BY MR. LEIB:

13 Q So the sentence is incomplete the way
14 it's written, correct?

15 MR. GUGLIELMO: Same objection.

16 A It could have been written better.

17 BY MR. LEIB:

18 Q Now, has the -- I'm sorry.

19 When did you join the Fund? You said
20 2000- --

21 A '11.

22 Q '11, right?

23 Since 2011, has the Fund required its
24 participants to pay a co-pay for drugs that

1 STATE OF ILLINOIS)

) SS:

2 COUNTY OF C O O K)

3
4 The within and foregoing deposition of
5 the aforementioned witness was taken before
6 MARIA S. WINN, CSR, RPR and CRR, at the place,
7 date and time aforementioned.

8 There were present during the taking of
9 the deposition the previously named counsel.

10 The said witness was first duly sworn and
11 was then examined upon oral interrogatories; the
12 questions and answers were taken down in shorthand
13 by the undersigned, acting as stenographer; and
14 the within and foregoing is a true, accurate and
15 complete record of all of the questions asked of
16 and answers made by the aforementioned witness, at
17 the time and place hereinabove referred to.

18 The signature of the witness was not
19 waived, and the deposition was submitted,
20 pursuant to Rule 30(e) and 32(d)4 of the Rules
21 of Civil Procedure for the United States District
22 Courts, to the deponent per copy of the attached
23 letter.
24

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The undersigned is not interested in the within case, nor of kin or counsel to any of the parties.

In witness whereof, I have hereunto set
my hand and seal of office this day, May 8, 2019.

Maria S. Winn

CSR No. 084-003784 - Expiration Date: May 31, 2019